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CASE NO. 91-0177 RG

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES, EX REL.,
MICHAEL E. GREEN,
Plaintiffs,

v.

NORTHROP CORPORATION, INC., a California corporation;
AUTEK CORPORATION; a California corporation;
LEE LANE, aka LEE LANE MCCUTCHEON,
an individual; SAM MCCUTCHEON, an individual;
and NORM BUSSARD; an individual,
Defendants.

STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW

DATE: June 29, 1992
TIME: 10:00 a.m.
PLACE: Courtroom of the Honorable Richard G. Gadbois

On June 29, 1992, Defendants' Motion for Summary Judgment, or Alternatively, to Dismiss, On Grounds that the Claims Asserted in this Case Have Been Released, came on for a hearing before the Honorable Richard G. Gadbois, Jr., United States District Judge. *Qui tam* Plaintiff Michael Green was represented by Linda R. MacLean, Esq., of the Law Offices of Herbert Hafif. Defendants Northrop

Corporation, Inc., and Norm Bussard were represented by D. Barclay Edmundson, Esq., and Gary D. Roberts, Esq., of Munger, Tolles & Olson. Defendants Autek Systems Corporation, L. Lee Lane and Samuel L. McCutcheon were represented by Thomas J. Nolan, Esq., of Miller & Nolan, Inc.

The Court, after carefully reviewing the pleadings and papers filed or lodged by the parties, and after hearing the argument of counsel, ordered that the Motion for Summary Judgment be granted as to Defendants Northrop Corporation, Inc., Norm Bussard and L. Lee Lane, as follows:

STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW

A. Uncontroverted Facts

1. In approximately 1980, the Advanced Systems Division, a division of defendant Northrop Corporation ("Northrop") also known as the "B-2 Division," entered into a contract with the United States for the development and production of the B-2 "Stealth Bomber." [Complaint for Violation of the False Claims Act, ¶ 15 (hereinafter "False Claims Act Complaint, ¶ ____)."]

2. As part of this contract, Northrop was required to design and develop Automated Test Equipment to test the avionics systems of the B-2 Stealth Bomber. [False Claims Act Complaint, ¶ 16.]

3. In September of 1986, *qui tam* plaintiff Michael E. Green ("Green") commenced employment as an investigator at Northrop's B-2 Division. [False Claims Act Complaint, ¶ 6.]

4. In his capacity as an investigator, it was Green's responsibility to investigate allegations of employee fraud and security violations, and to investigate into areas where the government may have been defrauded or damaged as a result of procurement violations. [False Claims Act Complaint, ¶ 7.]

5. During his employment at Northrop, Green conducted an internal investigation into whether Northrop had submitted false claims to the United States for costs associated with the procurement of Automated Test Equipment. [False Claims Act Complaint, ¶¶ 8, 16.)

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6. Green's employment with Northrop was terminated in October 1988. [False Claims Act Complaint, ¶ 8.]

7. On November 3, 1988, Green filed an action for tortious discharge and breach of implied covenant of good faith against Northrop in Los Angeles County Superior Court captioned *Green v. Northrop Corporation*, No. SEC 70908 (hereinafter "the tortious discharge action"). [Complaint for Tortious Discharge Based on Public Policy; Breach of Implied Covenant of Good Faith and Fair Dealing; Jury Trial Demand, attached as Ex. A to Roberts Declaration (hereinafter "Tortious Discharge Complaint, ¶ ____)."]

8. In his Tortious Discharge Complaint, Green alleged that he was terminated in retaliation for having conducted the internal investigation pertaining to the Automated Test Equipment. Specifically, Green alleged that he was "terminated in retaliation for [his] having brought to the attention of Chuck DeVito, Security Manager, double charging for equipment incident to the U.S. Airforce [sic] Contract for the purchase of Automated Test Equipment." [Tortious Discharge Complaint, ¶ 8.]

9. At his deposition in the tortious discharge action, Green testified as follows:

(a) that his investigation had concerned a particular component of the Automated Test Equipment known as the "Digital Word Generator" or "DWG." [Green Deposition at 140:22-141:25, attached as Ex. B to Roberts Declaration (hereinafter "Green Depo. at ____)."]

(b) that, according to his investigation, Northrop had purchased twenty-six of these DWGs from a subcontractor known as Autek Corporation. [Green Depo. at 142:7-14.]

(c) that these twenty-six DWGs did not work and Northrop was aware of this fact. [Green Depo. at 148:1-3.]

(d) that Northrop had double-charged the government for these components by purchasing additional items to replace the non-working DWGs. [Green Depo. at 142:7-143:7, 148:10-23.]

(e) that Northrop "renamed" the replacement components "DTMs" or "Digital Test Modules," and charged them to the same government contract. [Green Depo. at 142:7-143:7, 148:10-23.]

(f) that he was familiar with the *qui tam* lawsuit for violation of the False Claims Act and that, although he had not yet taken any

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action, he had considered the possibility of filing a such a lawsuit against Northrop. [Green Depo. at 281:19-282:19.]

10. On April 16, 1990, Green entered into the "Settlement Agreement and General Release" (hereinafter "General Release, ¶ ____"), an unambiguous, integrated[1] agreement in which he released all claims against Northrop, its employees and the others released therein. Green received $190,000 in consideration for his executing this mutually-negotiated, bargained-for General Release. [Settlement Agreement and General Release, attached as Ex. C to Roberts Declaration.]

11. Green was represented by and consulted with counsel of his choosing during the negotiation of the General Release. [Roberts Declaration (filed June 22, 1992), ¶¶ 4-8.]

12. Paragraph 8 of the General Release provides, in part, as follows:

> "Green does hereby release, acquit and forever discharge Northrop, its successors, predecessors, subsidiaries, parents, shareholders, partners, employees, agents, officers, directors, attorneys and insurers from any and all claims, expenses, debts, demands, costs, contracts, liabilities, rights to payment, obligations, actions and causes of action of every nature, under any theory under the law, whether common, constitutional, statutory or other of any jurisdiction, foreign or domestic, whether known or unknown, whether in law or in equity, which he had or held, or has or holds, or may claim to have or to hold by reason of any and all matters from the beginning of time to the present, including, but not limited to, those arising out of or relating to the [tortious discharge] Action and/or Green's employment with and separation from Northrop."

[General Release, ¶ 8.]

13. After signing the General Release on or about April 16, 1990, Green filed the present *qui tam* action for violation of the False Claims Act against Northrop, Norm Bussard ("Bussard"), Lee Lane ("Lane"), Sam McCutcheon and Autek Corporation. [False Claims Act Complaint.]

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[1]The agreement contained an explicit merger clause at Paragraph 17.

14. Bussard was an employee at Northrop during the time period covered by the allegations against him in the False Claims Act Complaint and remains an employee at Northrop's Defense Systems Division. [False Claims Act Complaint, ¶ 9.]

15. Lane was an employee at Northrop during the time period covered by the allegations against her in the False Claims Act Complaint. [False Claims Act Complaint, ¶ 14.]

16. In his False Claims Act Complaint, Green alleges that Northrop submitted false claims to the government for costs associated with the procurement of Automated Test Equipment under the B-2 Contract. [False Claims Act Complaint, ¶ 16.]

17. Also in his False Claims Act Complaint, Green alleges that Northrop: defrauded the government by submitting false claims for DWGs which failed to conform to government requirements; secretly and knowingly substituted the defective and non-conforming DWGs in place of the equipment for which the government had contracted; submitted false claims for payment for the twenty-six DWGs; and billed the government for an additional set of conforming DWGs which Northrop had "renamed" "Digital Test Modules." [False Claims Act Complaint, ¶¶ 44-46, 52, 54, 56-57.]

18. The allegations in the False Claims Act Complaint are related to the investigation Green conducted prior to his termination at Northrop, which investigation is described in Paragraphs 8 and 9, *supra*. [False Claims Act Complaint, ¶ 8.]

19. After conducting its own intensive investigation and study of the allegations in Green's False Claims Act Complaint, the government declined to intervene in this *qui tam* action. [Roberts Declaration (filed June 22, 1992), ¶¶ 9-10.]

B. Conclusions of Law

1. Whether a contract is clear and unambiguous is a question of law that may be resolved on a motion for summary judgment. *Edison v. Reliable Ins. Co.*, 664 F.2d 1130, 1131 (9th Cir. 1981); *accord Orkin Exterminating Co. v. Federal Trade Commission*, 849 F.2d 1354, 1360 (11th Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989); *Freeman v. Continental Gin Company*, 381 F.2d 459, 465 (5th Cir. 1967).

2. Under federal common law, contractual disputes are resolved by the text of the integrated contract itself, and extrinsic evidence is admitted only if the actual text is ambiguous. *See Pierce County Hotel Employees and Restaurant Employees Health Trust v. Elks Lodge, No. 1450*, 827 F.2d 1324, 1327 (9th Cir. 1987); *accord Keel v. Group Hospitalization Medical Services*, 695 F. Supp. 223, 229 n. 19 (E.D. Va. 1988); *Evans v. Safeco Life Insurance Co.*, 916 F.2d 1437, 1441 (9th Cir. 1990).

3. Under California law, extrinsic evidence is admitted only where the language of the agreement is reasonably susceptible to the meaning urged by the party proffering such evidence. *See Brobeck, Phleger & Harrison v. Telex Corp.*, 602 F.2d 866, 871 (9th Cir.), *cert. denied*, 444 U.S. 981 (1979) (applying California law); *see also Oakland Alameda County Coliseum, Inc. v. Oakland Raiders, Ltd.*, 243 Cal.Rptr. 300, 305, 197 Cal.App. 3d 1049 (1988).

4. The General Release clearly and unambiguously released all claims that Green had or held against Northrop, its employees and the others released therein, including the statutory right to payment he seeks to recover under the False Claims Act in this *qui tam* action.

5. Federal common law is applied to determine whether an agreement releases a federal cause of action, even where the agreement states that it is to be interpreted under the laws of a particular state. *Petro-Ventures, Inc., v. Takessian*, No. 90-55349, 92 Daily Journal D.A.R. 8513 (9th Cir. June 22, 1992). *See also Salmeron v. United States*, 724 F.2d 1357, 1361 (9th Cir. 1983) (construing release of claim for civil rights and constitutional violations). In any case, because the General Release is unambiguous and integrated, and because Green's proposed extrinsic evidence is proffered solely for the purpose of giving the General Release a construction to which its language is not reasonably susceptible, the extrinsic evidence he offered in opposition to the summary judgment motion is inadmissible whether federal common law or California law governs the interpretation of the General Release.

6. Moreover, because Green was aware of his potential *qui tam* action against Northrop, the burden fell to him to exclude it from the scope of the General Release; as he failed to do so, the General Release is presumed to include his right to payment in this *qui tam* action. *See Edward v. Comstock Ins. Co.*, 205 Cal.App.3d 1164, 1169, 252 Cal.Rptr. 807 (1988).

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7. Since the government has elected not to intervene in this *qui tam* action and remains free to reconsider its decision pursuant to 31 U.S.C. § 3730(c)(3), there are no public policy considerations which would bar the enforcement of the General Release. On the contrary, public policy strongly favors the enforcement of "ironclad and enforceable general releases." *Winet v. Price*, 4 Cal.App.4th 1159, 1173, 6 Cal.Rptr.2d 554 (1992).

8. Furthermore, in order to bring a *qui tam* action under § 3730(b), a relator must have standing under Article III of the Constitution. *See Hyatt v. Northrop Corp.*, No. CV 87-6892 KN (C.D. Cal. Dec. 27 1989), Slip. op. at 6.

9. In signing the General Release, Green bargained away his right to payment under the False Claims Act, as well as any right to employment by Northrop, and, thus, he lost any standing he might have otherwise had to bring a *qui tam* action against Northrop, its employees and the others released therein.

10. There is no genuine issue as to any fact material to their Motion for Summary Judgment; thus, Defendants Northrop, Bussard and Lane are entitled to summary judgment on the grounds that Green has released all claims he had or held against them and thus lacks standing to pursue this action. *See Coleson v. Inspector General of Dept. of Defense*, 721 F. Supp. 763, 769 (E.D. Va. 1989) (summary judgment mandated where there was no genuine issue of material fact as to the effect of the release contained in the settlement).

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Dated: 7-15-92 /s/ RICHARD A. GADBOIS. JR.

THE HONORABLE RICHARD G. GADBOIS, JR.
United States District Judge

Submitted by:

MUNGER, TOLLES & OLSON
BRAD. D. BRIAN
D. BARCLAY EDMUNDSON
GARY D. ROBERTS

By: /s/ Gary D. Roberts

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